

January 17, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

COMMENTS OF SUE PRESENT

WT Docket No. 16-421

re: STREAMLINING DEPLOYMENT OF SMALL CELL INFRASTRUCTURE;
MOBILITIE, LLC PETITION FOR DECLARATORY RULING

Madam Secretary:

The outrageous assertions and behaviors of members of the wireless industry, including the Petitioner Mobilitie (Petitioner), are hyperbole, and they exhibit the characteristics of conniving, gluttonous bullies. Under the circumstances, the FCC should respond with condemnation: certainly not by rewarding the wireless industry with the FCC's imprimatur to completely run roughshod over local communities – be damned the regulatory process of Local Government Units (LGUs) that protect public safety and welfare – as is sought through the Mobilitie Petition for Declaratory Ruling (Petition).¹ I ask the FCC to look beyond the façade of jaundiced industry complaints and overeager speculation, including those referenced in the Wireless Telecommunications Bureau Public Notice (WT Docket No. 16 -142) and in the Petition, and to explore the reality of what has transpired in my jurisdiction, Montgomery County, Maryland, and other LGUs throughout the nation.

Sufficient time, care, and public processes are required by LGUs to protect public safety and welfare. As was previously documented by Montgomery County to the FCC, **carriers and their contractors have hastily submitted dangerously inaccurate, incomplete, or otherwise flawed information in their rush to gain approvals and to complete wireless installations.**² Montgomery County also joined with other jurisdictions to previously comment to the FCC about concerns that precipitously expediting sitings could have upon public safety and welfare. The comments included discussion of how a wireless distributed antenna system (DAS) host's dreadful actions resulted in an enormous fire and devastating

¹ Petition for Declaratory Ruling by Mobilitie, LLC, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way*, (Nov. 15, 2016). ("Petition").

² Reply Comments of Montgomery County, MD, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, at iii, iv, 10 – 18 (July 21, 2009).

consequences.³ “In the 2007 Malibu Canyon Fire, **three utility poles snapped because they had been overloaded by the installation of a DAS system by NextG Networks [the neutral wireless host that now does business under the name Crown Castle]. “The result was a fire that burned 3,836 acres, 36 vehicles, and 14 structures (including historically significant structures), and damaged others. (It also caused injuries to three firefighters.)”**⁴ Investigations revealed that NextG had placed attachments on poles in direct contradiction to the safety directives that had specifically denied it permission to do so; NextG’s attachments had overloaded poles in violation of applicable safety codes and rules, and it had “installed facilities, including a fiber optic cable that were not safe in light of the condition of the pole and known local conditions (the Santa Ana winds).”⁵

The neutral wireless hosts that are competing for wireless broadband supremacy in Montgomery County’s public rights-of-way (PROWs) are Crown Castle and Mobilitie. Despite findings of the NextG/Crown Castle safety violations that led to the aforementioned Malibu Canyon Fire and the resulting catastrophic damages and injuries, recently **it has been Mobilitie that has drawn media attention and public indignation for violations of the law and other highly questionable activities.** Mobilitie has been masquerading as a state-regulated utility in at least 18 states, apparently to access PROWs without obtaining government permits and to elude public notice/complaints.⁶ Despite its charades, Mobilitie was caught and cited for constructing its facilities in PROWs in my own state of Maryland and the neighboring state of Virginia without having the (safety and other) state and/or LGU permits.⁷ As the FCC has long been aware, “[n]ot only are unauthorized attachments a hidden cost [to state-regulated utilities and the LGUs] in the literal sense in terms of lost revenue, but they as well as non-compliant attachments create additional load on the poles, which can (and has) caused poles to snap. Conversely for attachers, they save money both in terms of rent and often avoided make ready.”⁸ **“Unauthorized and non-compliant attachments threaten the safety of linemen as well as**

³ Comments of the City of Alexandria *et. al.*, WT Docket No. 13-238, at 14 – 15 (Feb. 3, 2014). Referencing M. Caskey, The Malibu Times, *CPUC Approves \$51.5-Million Malibu Canyon Fire Settlement* (Sept. 24, 2013), available at http://www.malibutimes.com/news/article_3d62067a-2175-11e3-86b6-001a4bcf887a.html.

⁴ *Id.*

⁵ See *supra* note 3 at 15. Referencing Decision Conditionally Approving the NextG Settlement Agreement, *Investigation on the Commission’s Own Motion into the Operations and Practices of Southern California Edison Company, Cellco Partnership LLP d/b/a/ Verizon Wireless, Sprint Communications Company LP, NextG Networks of California, Inc. and Pacific Bell Telephone Company d/b/a/ AT&T California and AT&T Mobility LLC, Regarding the Utility Facilities and the Canyon Fire in Malibu of October 2007*, Investigation 09-01-018 (Sept. 19, 2013), at 10, available at:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K059/77059441.PDF>

⁶ See for example: 1) M. DeGrasse, RCR Wireless News, *Mobilitie to Increase Transparency for Jurisdictions* (May 27, 2016), available at <http://www.rcrwireless.com/20160527/network-infrastructure/mobilitie-utility-tag4>, 2) Inside Towers, *Minnesota Utilities Warn Mobilitie About Misrepresentation* (©2017), available at

<https://insidetowers.com/cell-tower-news-minnesota-utilities-warn-mobilitie-misrepresentation/>, and

3) J. Kramer, Dr. Jonathan L. Kramer on Wireless Siting and Law Blog, *Let the California Utility Pole Authority Games Begin* (Feb.5, 2016), available at http://wireless.blog.law/2016/02/05/cupa_joe/.

⁷ *Id.*; and also see for example: A) Wireless Estimator, *One Company Fined for Not Getting a Small Cell Permit, Another for Not Permitting Inspectors* (Apr. 4, 2016), available at <http://wirelessestimator.com/articles/2016/one-company-fined-for-not-getting-a-small-cell-permit-another-for-not-permitting-inspectors/> and

B) M. Smith, WTOP, *Cell Sites Installed Without Pr. William Co. Approval Received VDOT’s OK* (Dec. 16, 2016), available at <http://wtop.com/prince-william-county/2016/12/cell-service-antennae-utility-poles-test-prince-william-county/>.

⁸ Utilities Telecom Council, *Pole Attachments: A White Paper*, at 20 (Oct. 31, 2007), available at <https://ecfsapi.fcc.gov/file/6519864708.pdf>.

the general public. They also undermine critical infrastructure. Although utilities do not generally track statistics on pole attachment related accidents, they did report numerous incidents that highlight the impact on critical infrastructure and public safety.”⁹ Mobilitie has also been exploiting regulations and its rights to occupy PROWs by installing “micro-macro” facilities that at 70 to 120 feet in height rival the heights of many standard macro facilities.

In Montgomery County’s PROWs, wireless antennas and equipment may be attached to existing or modified County streetlight poles, traffic poles, or the distribution poles of State-regulated utilities, or they may be installed on the hosts’/carriers’ new poles. The proposals for these installations deserve careful review because **facilities, installations, and sitings in the PROW can pose safety hazards,** which include:

- Excessive loading on structurally inadequate poles¹⁰
- Roadside crash hazards created by excessive loads attached to poles¹¹
- Obscured driver/pedestrian roadway visibility¹²
- Obstructed walkways/bikeways¹³
- Dangerous impediments to mobility of persons with disabilities¹⁴
- Interference with established public, private, and school transportation services and routes¹⁵
- Threats to tree health or sparks/fires resulting from inadequate distance from trees, limbs, or planned trees¹⁶
- Barriers to emergency response services, including fire suppression¹⁷
- Interference with planned or established emergency communications¹⁸
- Disruptions to public services¹⁹
- Hazards to utility workers and workers servicing franchisee facilities that are attached to a pole or otherwise occupy the PROW²⁰

Crown Castle’s attachments to County streetlamp poles and wooden utility distribution poles can weigh up to 620 pounds and 636 pounds per installation, respectively.²¹ Crown Castle submitted technical applications that proposed wireless attachments on County streetlamp poles that weigh 300 lbs. Those loads were determined by the County to be structurally unsafe for the existing poles and roadways. The County therefore required redesigned replacement poles that would both support the

⁹ *Id.*

¹⁰ *Id.*, See also supra note 3 and infra note 22.

¹¹ A. Gagne, Worcester Polytechnic Institute, *Evaluation of Utility Pole Placement and the Impact on Crash Rates* (Apr. 23, 2008), available at <https://web.wpi.edu/Pubs/ETD/Available/etd-043008-155826/unrestricted/Gagne.pdf>.

¹² Comments of the City of Tempe, Arizona, WT Docket No. 13 - 238, at 17 – 19 (Mar. 5, 2014).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Montgomery County (MD) Public Hearing on ZTA 16-05. (Jul. 19, 2016), S. Present ~ at min 00:23:00, available at (http://montgomerycountymd.granicus.com/MediaPlayer.php?view_id=136&clip_id=12000).

¹⁶ *Id.*; See also supra note 3.

¹⁷ See supra note 12.

¹⁸ See infra note 37.

¹⁹ See supra note 12.

²⁰ See supra note 8.

²¹ See the attached excerpt, Exhibit B of the NextG Networks Atlantic, Inc. franchise agreement. The agreement was adopted by Resolution 15-1335 on February 14, 2006.



loads and “breakaway” in the event of collision.²² As a result, the applicant(s) paused the “shot clock” to collaborate with the County on replacement designs that would sustain Crown Castle’s and its tenants’ loads, and comply with applicable safety codes, protect the public, and serve the host and its tenants’ needs.²³ Other Crown Castle technical applications document that PEPCO, the regulated investor-owned utility (IOU), has been unable to accommodate the substantial loads of the wireless attachments at some proposed sites. As a result, PEPCO is instead installing new, non-essential utility poles, mid-span, between existing utility poles along the roadway for Crown Castle to install wireless facilities.²⁴ Wooden utility distribution poles do not breakaway upon impact in a collision.²⁵ Highway safety studies report that **increasing the number of utility poles along roadways, as well as increasing pole girth/thickness, contributes to our nation’s injuries and fatalities.**²⁶ Wireless attachments that have already been approved and attached to wooden utility distribution poles along the PROWs of winding two-lane State highways serve multimodal transportation: vehicles of all types and sizes share the roads with cyclists as well as pedestrians who walk along the shoulders of the roadways because there are no sidewalks. This includes children who walk to and from school (sometimes in the dark). An FCC rule/order that would further expedite the wireless attachments, would without a doubt, adversely affect highway safety.

In its quest for unfettered access to the PROWs, the Petitioner attempts to equate wireless commercial broadband services to the “essential services” of a regulated public utility.²⁷ The Petitioner additionally asserts its need for FCC action to further the congressional mandate for FirstNet.²⁸ However, **Mobilitie’s requests for FCC intervention are subterfuges.** In Montgomery County, the recent spike in applications submitted by **Mobilitie, Crown Castle, and their wireless carrier tenants are “creaming” or “cherry picking” select geographic areas to provide enhanced wireless broadband coverage, while at the same time failing to provide even minimal levels of wireless broadband service to other geographic areas in the County.**²⁹ Nothing either in the publicly available applications that have been recently submitted by these hosts and their tenant carriers or in the hosts’ franchise agreements with the County to occupy the PROWs suggests any interest or plans to meet the basic standard of a state-regulated utility to serve all consumers in their service territory.³⁰ Mobilitie also does not demonstrate to the FCC that its commercial wireless broadband service is either provided or contemplated to serve residential consumers throughout all its service territories. Obviously, wireless broadband service does not rise to the caliber of an “essential public service,” otherwise the Petitioner and its industry would

²² Montgomery County Council Planning Housing and Economic Development (PHED) Committee Worksession (“PHED Worksession”), Item 7, ZTA 16-05 ~ at min 00:10:00 to 02:04:16. (September 12, 2016), available at http://montgomerycountymd.granicus.com/MediaPlayer.php?view_id=136&clip_id=12166, M. Williams ~at min 00:39:00 – 00:40:00.

²³ *Id.* M. Williams ~ at min. 00:56:00 – 00:57:00.

²⁴ See for example the attached TFCG Report/Recommendation re: application #201601-15 for node NPE-033. The application proposes installing a new mid-span wooden distribution pole DAS antennas and equipment.

²⁵ See supra note 22, J. Zyontz ~at min. 01:02:00.

²⁶ See supra note 11.

²⁷ Petition at 2.

²⁸ Petition at 5 – 6.

²⁹ See Tower Committee map displaying “2016 Applications for DAS and ‘Small Cells’” (<https://gis3.montgomerycountymd.gov/WirelessApplications/>).

³⁰ See infra note 43.

be ensuring that all consumers in their service territories were equipped with adequate coverage.³¹ Further undermining the Petitioner's assertions, not a single member of the wireless industry is on public record as having plans to provide coverage to all residents or all properties throughout its local service territory to support Countywide coverage for FirstNet (emergency responder communication). **In Montgomery County, the industry's plans are to densify/enhance areas that currently have superior connectivity, while approximately one third of the County remains either with inadequate connectivity or has none at all.**³² This disparity in connectivity is predominantly a problem in the area referred to as the Ag(ricultural) Reserve, where Census data show a disproportionately large percentage of the County's older residents are located.³³ **A FirstNet system that ignores segments of our County, especially its aging population, is a system that is for all intents and purposes broken from the start.**

As the Petition notes, "Congress created FirstNet in the 2012 Spectrum Act to provide a comprehensive state of the art national wireless network for the nation's public safety agencies."³⁴ Has Mobilitie, in its Petition, been overtaken by enthusiasm to persuade the FCC to act, and inadvertently exaggerated the commercial wireless industry's abilities to support FirstNet? Or is this a sleight of hand? The current technology that is being installed by Mobilitie, Crown Castle, and its tenants is commercial 4G LTE, at best. "Unfortunately, **commercial LTE networks simply aren't built to the reliability standards required by first responders**, so while the technology exists, and is used today by the public, it cannot be whole-heartedly adopted by first responders."³⁵ There is extensive speculation – just speculation – about 5G technology. Despite all the hype, the future upgrade to 5G isn't really expected to remedy the commercial networks' reliability problems. "Spurred by high-profile public safety communications failures during 9/11 and Hurricane Katrina, and recognizing that **commercial networks would never meet the reliability standards needed by first responders**, Congress passed a law creating 'FirstNet,' a project to build a dedicated LTE network for first responders."³⁶ For LGUs to effectively embark on this critical challenge, it is essential that sufficient review processes take place to ensure that commercial facilities are sited at proximities that will not disrupt or otherwise interfere with planned or installed public safety communications networks. As a Verizon expert explained during an LGU hearing, co-locations at DAS node sites will diminish transmission capabilities.³⁷

³¹ See supra note 27.

³² See supra note 21, M. Herrera ~at min. 01:29:20 – 01:30:35.

³³ *Id.*, and see Ag Reserve census data at <http://www.montgomerycountymd.gov/rice/Resources/Files/Agreserve.pdf>.

³⁴ See supra note 27.

³⁵ B. Yelin and C. Webster, The University of Maryland Center for Health and Homeland Security Blog, *Public Safety Interoperability Challenges Remain – Why We Need FirstNet*. (January 22, 2015). (<http://www.mdchhs.com/public-safety-interoperability-challenges-remain-why-we-need-firstnet/>). (emphasis added)

Note. Law and Policy Analysts Ben Yelin and Christopher Webster are identified at this publication site as two of the five members tapped to develop and staff a Maryland FirstNet Broadband Team for the Maryland Statewide Interoperability Office.

³⁶ *Id.* (emphasis added).

³⁷ A. Martins, CentralJersey.com. *Hillsborough: Verizon Wireless Expert Grilled During Cell Tower Hearing* (Sept. 22, 2016). At a variance hearing, in Hillsborough Twsp, NJ., the applicant's expert, Verizon radio frequency engineer David Stern answered questioned about installing DAS in a neighborhood instead of a monopole. "What limits the coverage of the DAS is the power amplifiers that they put in the (attached equipment)," he said. "Every time you add another carrier to that same DAS

Montgomery County and the D.C. Metropolitan Area continue to struggle with wireless 911 failures. For example, on August 16, 2016, Sprint's emergency backup power supply was depleted of fuel, leaving residents of the metropolitan area in Maryland, Virginia, and Washington, D.C. without 911 cell service for days.³⁸ "[Tony Rose, Chairman of the Metropolitan Washington Council of Governments' 911 Committee and Chief of Public Safety Communications and 911 in Charles County] said, 'It's going to happen again, there's no question about it,'"³⁹ As a result, **Montgomery County and other LGUs in are expending resources to prepare and compensate for these anticipated wireless industry emergency communications mishaps.**⁴⁰

Staff reported to the County Council's PHED Committee that the County had recently experienced an unprecedented volume of wireless applications and anticipates substantial further increases in volume within the fiscal year. In response to questions from Councilmember/Committee member Leventhal, staff indicated that the volume of applications received by Montgomery County far exceeded the application volumes being experienced by comparable jurisdictions in the metropolitan area. Councilmember Leventhal reacted with surprise, skepticism, and suspicion to the information that both/all of the hosts serving our County were, in essence, simultaneously and aggressively seeking wireless PROW sitings, but that they were not doing the same in comparable neighboring counties.⁴¹ I urge the FCC to explore **tell-tale signs of wireless industry collusion**, and to refer these matters to appropriate investigative agencies.

Petitioner Mobilitie complains of delays and discrimination. These complaints are absurd! **Mobilitie and its fellow industry members are not the victims of discrimination; if anything, they are the perpetrators** in Montgomery County and throughout the nation. Evidently, after masquerading as a state-regulated utility in at least eighteen states, Mobilitie has managed to deceive itself.⁴² Why would it otherwise assert to the FCC that it deserves the favorable treatment given to state-regulated utilities, asserting that it provides an "essential public service" on par with the incumbent telephone companies and IOU electric companies that occupy the PROWs?⁴³ Though Mobilitie seeks the benefits of being state-regulated utilities, it and other wireless industry members eschew being saddled with the kind of responsibilities or regulations that govern state-regulated utilities.⁴⁴ In seeking only the benefits and

node and you split it, you cut the power in half, so automatically, the coverage that you got from that site shrinks up and each time you do that, it shrinks some more.'" Thus, the article concludes, "'the only way to combat such a reduction would be to construct additional DAS nodes.'" Find the complete article at (http://www.centraljersey.com/news/hillsborough-verizon-wireless-expert-grilled-during-cell-tower-hearing/article_e2b66d88-8107-11e6-a884-4343c32456e0.html).

³⁸ V. St. Martin, Washington Post.com, *Sprint Emergency Generators Ran Out of Fuel, Cutting Off 911 Cell Service* (Sept. 24, 2016), available at https://www.washingtonpost.com/local/public-safety/sprint-emergency-generators-ran-out-of-fuel-cutting-off-911-cell-service/2016/09/24/1cd23f20-7ecd-11e6-8d13-d7c704ef9fd9_story.html?utm_term=.8dee201601a2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See supra note 22, G Leventhal ~ at min. 00:42:00 – 00:51:00.

⁴² See supra note 7.

⁴³ Petition at 2.

⁴⁴ See for example, § 2.113 of the Public Utilities Companies Article of the Maryland Code, which in part states:

"(a)(1) The [Maryland Public Service] Commission shall:

(i) supervise and regulate public service companies subject to the jurisdiction of the Commission to:

skirting the responsibilities of a regulated public utility, **the wireless industry does not seek a level playing field; it seeks undue preferential treatment.**

Montgomery County has demonstrated its continued interest in seeking to address the industry's growing demands for access and speed. However, it is imperative that any County response to the industry be balanced and constrained, and that it not have the effect of sacrificing public safety and welfare. In residential and other more sensitive PROW areas, community members are often the in the best position to notice the potential hazards or excessive adverse impacts of proposed wireless sitings, as they might relate to unique visual obstructions, local terrain hazards, and applicant errors that might escape County officials' radar. States and/or LGUs must have the latitude to conduct public reviews, particularly for those sites that deserve extra care, whether to protect aesthetics, sensitive environmental features, or to preserve community character.

Over the years, Montgomery County's affected residents have been instrumental in identifying a wide range of issues that had escaped public officials' timely detection. For example, affected residents:

- Provided notice that DAS node applications that were slated for votes by the Tower Committee, and which had completed Tower Coordinator engineering reviews and received favorable recommendations, were sites in the PROWS of the City of Gaithersburg, an incorporated municipality that makes independent decisions on land use matters.⁴⁵
- Documented that the proposed location for a wireless site would disrupt grading in close proximity to an earthen dam that retains manmade ponds, and, as a result, would likely produce the flooding of nearby homes and public streets.⁴⁶
- Demonstrated that engineering plans, which were part of a carrier's petition for a special exception and the carrier's exhibits introduced at a public hearing, had been altered and falsely represented the proposed wireless facility location and the distances from off-site dwellings.⁴⁷


1. **Ensure their operation in the interest of the public;** and

2. Promote adequate economical and efficient delivery of utility services in the State without unjust discrimination; and

(ii) **enforce compliance with the requirements of law by public service companies, including requirements with respect to financial condition, capitalization, franchises, plant, manner of operation, rates, and service."**

⁴⁵ Aaron Rosenzweig sent e-mail messages to multiple Montgomery County and City of Gaithersburg officials, alerting them that items #55 and #61 on the October 5, 2016 (Transmission) Transmission Facilities Communications Group (Tower Committee) agenda concerned applications at properties located within the Gaithersburg city limits and were therefore ineligible for Tower Committee action. (Sept. 30, 2016). The October 5, 2016 Tower Committee agenda is available at http://www.montgomerycountymd.gov/cable/Resources/Files/Towers/agendas/2016/10-5-16_agenda%20FINAL.pdf.

⁴⁶ John Placanica of the Forest Estates Community Association sent e-mail messages to Mark Etheridge of the Department of Permitting Services, and to Amy Stevens, Mary Travaglini, and Julia Liu, of the Department of Environmental Protection. He alerted County staff that hazards of the proposed development and transmission facility at the Sligo Baptist Church posed upon the Denis Avenue retention ponds. (Sept. 25, 2014).

⁴⁷ Philip J. Tierney, *Special Exception Report and Recommendation S-2709, In the Matter of T-Mobile, LLC and West Hillandale Swim Club*, Office of Zoning and Administrative Hearings (OZAH), Montgomery County, Maryland, at 27 – 31 (Oct. 28, 2010), attached. 

In each of the above situations, affected residents helped the County avert a problem by sharing information. However, individual residents' ability to participate in the public process could be stifled through the batching of petitions. In Montgomery County, applications exceeding certain zoning standards or proposing siting in residential or other sensitive areas require a regulatory review. The regulatory review is a quasi-judicial process, and provides affected individuals the right to participate in a hearing, *pro se*. If petitions were batched for the regulatory review, the interests of individuals would likely be comingled and grouped. As a result, the current County regulations and State law could be interpreted to require full representation in the review only by legal counsel.⁴⁸ An FCC ruling that would institute batching for applications is likely to have the effect (perhaps in violation of residents' civil rights) of financially limiting and/or excluding affected individuals' participation in the LGU process. To be clear, this regulatory review process is only required in specified areas or circumstances. But it is the sole public review process in which residents are afforded the opportunity to participate.

All applications go through the County's technical review process, as an initial review. For many DAS network applications, batching the reviews of technical applications can be ideal because the proposed nodes' RF technical data are interdependent.⁴⁹ In fact, Montgomery County already conducts batch-type technical reviews of many wireless applications. But, to be clear, the evaluation of batched technical applications appear to be no less resource-intensive than separate applications. The expense for applications should not be expected to differ with batching. So far, the fees for these technical application reviews have remained constant since 2002, even though related County operating expenses, residential property taxes, and many other fees have increased since then. Arguably, all application expenses should be covered by their user-applicants, not by other tax payers. Technical reviews of applications take place promptly. They consist of an engineering review and report, and are followed by a review and vote by the County's (Telecommunications) Transmission Facilities Communications Group (Tower Committee), which meets monthly. The Tower Committee does not entertain comment or participation from affected residents or the public at-large at its meetings. However, the wireless industry is provided a forum at these meetings to present its issues, concerns, and perspectives.⁵⁰

Over the years, the County Council has repeatedly expedited the approvals of wireless franchise agreements to occupy the County's PROWs by passing resolutions on the Council's consent agendas, and waiving committee reviews and public hearings.⁵¹ The approved franchise agreements set

⁴⁸ OZAH notifies parties of interest that "In compliance with Maryland requirements regarding the practice of law, groups or associations must be represented by counsel, unless their witnesses are members of the group or association and will offer testimony in narrative form (*i.e.*, there is no need for an attorney to conduct a direct examination), [at a OZAH hearing.]" Further details are available at OZAH's FAQ page:

www.montgomerycountymd.gov/OZAH/Resources/Files/pdf/FAQABOUTHEARINGS.pdf .

⁴⁹ See *supra* note 22. J.D. Mc Cluskey ~ at min. 00:35:00 – 00:36:00.

⁵⁰ J. Sartucci, Parents' Coalition of Montgomery County, Maryland Blog, *Breaking: Neelsville PTSA Says They Have No Position On Cell Tower, Contradicts MCPS Assertion to Tower Committee* (Jan. 12, 2017).

<http://parentscoalitionmc.blogspot.com/2017/01/breaking-neelsville-ptsa-says-they-have.html>

⁵¹ See, for example, Resolution 18-292, adopted October 20, 2015, without a public hearing, approving the Mobilitie, LLC franchise agreement; and Resolution 16-1484, adopted September 28, 2010, without a public hearing, approving the New Paths Networks LLC franchise agreement and recognizing therein the merger in progress that would make New Paths Networks LLC a "wholly-owned subsidiary of Crown Castle Solutions Corp."

franchise fees, but those franchise fees are neither collected from nor paid by the wireless PROW occupants.⁵² In a further twist of irony, the County Code requires the abutting residential property owners to provide general maintenance of the PROW grounds.⁵³ So to recap: the wireless hosts and their tenants reap substantial financial benefit from the PROWs that they occupy;⁵⁴ the County does not collect franchise fees (but certainly collects taxes) from the wireless PROW occupants; and the abutting residential property owners, who suffer the visual, economic, and sometimes other adverse impacts from the wireless facility sitings, receive no compensation and are required by law to maintain the (more cluttered) abutting PROW grounds.⁵⁵

Montgomery County has been very responsive to the wireless industry's needs for fast-tracking. In the past, in response to FCC rules and orders, and yielding to the industry concerns, Montgomery County has several times amended its Code. In 2010, the Council passed legislation to streamline the regulatory and approval process for cell towers, co-locations, and modifications. This legislation reduced the regulatory review tiers from three to two, and condensed the approval process for new facilities, modifications, and co-locations to comply with the "Shot-Clock" Rule. In 2014, it passed a new zoning ordinance that further revised/streamlined the regulatory review and approval process for all cell towers. Among other things, with the three-tier regulatory process having previously been reduced to two tiers in 2010, it eliminated one of the remaining review tiers, thereby making the regulatory process a single-tier process. Also in 2014, it passed special legislation for "small cell" antennas. This legislation defined "small cell" antennas, and authorized "small cell" installations on existing structures in all residential zones "by right," which therefore bypassed the public notice and hearing review process. In 2016, forecasting the spike in wireless applications, the Council passed an FY17 budget to add funding for hours/staff to accommodate timely reviews and decisions of the anticipated larger volume of new petitions for approvals of wireless installations. In 2016, Councilmembers proposed further "small cell" legislation, which had been promoted by the wireless industry.⁵⁶ However, when the legislation encountered significant citizen resistance, that legislation was tabled so that the County could collaborate with local residents and organizations to embark on administrative and legislative refinements, and yet accommodate the uptick in application volume and ensure timely reviews.⁵⁷

In October 2016, related to the aforementioned proposed "small cell" legislation, the County hosted a Community Forum. There, the industry representatives agreed to pause their application "shot clocks" while the County explored alternative administrative and legislative solutions for PROW applications.⁵⁸ Also at the forum, noting Montgomery County's close geographic proximity to the US Capitol,

⁵² See supra note 22, M. Herrera ~at min. 00:10:00 – 01:12:00.

⁵³ See Montgomery County Code, Chapter 49, Sections 17 and 33.

⁵⁴ Dolman & Seymour, *Valuation of Transportation/Communication Corridors*, Appraisal J., 509, 515 (Oct. 1978). "The value of the land in this case lies not in the size of the land, but in its ability to connect two points. These transportation corridors, while small, 'enjoy special value characteristics.'"

⁵⁵ M. Fischler, *The New York Times.com, A Pushback Against Cell Towers* (Aug. 29, 2010), available at <http://www.nytimes.com/2010/08/29/realestate/29Lizo.html>

⁵⁶ See supra note 22, G Leventhal ~ at min. 00:20:19 – 00:23:45.

⁵⁷ *Id.*

⁵⁸ Montgomery County Community Forum on Small Cell Towers (October 26, 2016), available at http://montgomerycountymd.granicus.com/MediaPlayer.php?view_id=136&clip_id=12500; see industry applicants/panelists ~ at min. 01:48:00 – 01:51:00.

attendees astutely speculated that residents likely to be adversely impacted by proposed PROW small cell installations would probably include FCC staff, their loved ones, perhaps even some Commissioners and their families, too. As a result, for the sake of the nation, for the sake of Montgomery County, and also for the sake of the Commission's own, I urge the FCC to please consider the updated, corrected, and more detailed information presented herein. Do not be hoodwinked by the specious claims of the wireless industry. The expansive FCC action that has been requested by the wireless industry is not warranted at this time. Such action would be precipitous and would unnecessarily interfere with states' and LGUs' powers to provide those within their jurisdictions regulatory processes that are fair and open, and to protect public safety and welfare.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sue Present".

Sue Present

1000 La Grande Rd.

Silver Spring, MD 20903

240.331.9155

suepresentATcomcast.net